

# ***EXHIBIT 12***

**5:21-cv-844 (XR)****Entero v Texas**

Jonathan Sherman White 1

**4/27/2022**

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**1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO §  
ENTERO, ET AL., §  
Plaintiffs, § Civil Action No.  
§ 5:21-cv-844 (XR)  
VS. § (Consolidated Cases)

STATE OF TEXAS, ET AL. §  
Defendants. §

\*\*\*\*\*

ORAL DEPOSITION OF  
JONATHAN SHERMAN WHITE  
APRIL 27, 2022

\*\*\*\*\*

ORAL DEPOSITION OF JONATHAN SHERMAN WHITE,  
produced as a witness at the instance of the Plaintiffs  
and Plaintiff-Intervenors, and duly sworn, was taken in  
the above-styled and numbered cause on the 27th day of  
April 2022, from 9:11 a.m. to 5:31 p.m., before Caroline  
Chapman, CSR in and for the State of Texas, reported by  
Computerized Stenotype Machine, Computer-Assisted  
Transcription, held at the William P. Clements Jr. State  
Office Building, 300 West 15th Street, Hearing Room  
1001E, Austin, Texas, pursuant to the Federal Rules of  
Civil Procedure.

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1 **specific elements.**

2 Q. Let's turn forward now to 4.09(a), which is on  
3 Page 29.

4 **A. Yes, ma'am.**

5 Q. Here would you agree with me that  
6 Section 33.061(a) already describes an offense related  
7 to preventing a watcher from observing?

8 **A. Yes, ma'am.**

9 Q. And would you agree with me that there is new  
10 language now brought in my SB 1 that makes it an offense  
11 to take any action to obstruct the view of a watcher  
12 distance the watcher from the activity or procedure to  
13 be observed in a manner that would make observation not  
14 reasonably effective?

15 **A. Yes, ma'am. That's what it says.**

16 Q. In this language here, starting at Line 8,  
17 where it says "taking any action," you would understand  
18 that to mean it could be any one of a number of  
19 different types of action, right? Action is not defined  
20 here, but it says "any action," you agree?

21 **A. I would agree that "action" is not defined.**

22 Q. It also says "any action," doesn't it?

23 **A. Yes, ma'am, it does.**

24 Q. Do you know what action would obstruct the view  
25 of a watcher?

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1 MR. HUDSON: Objection, form, foundation.

2 Objection, calls for speculation.

3 **A. I don't know what that -- that action would be.**

4 **Could be anything, I suppose.**

5 Q. Okay. Do you know what action would be to  
6 distance the watcher from the activity or procedure?

7 MR. HUDSON: Same objections.

8 **A. I don't. I don't have a list of examples of**  
9 **that off the top of my head, no, ma'am.**

10 Q. Do you know what would -- do you know what  
11 would constitute a manner that would make observation  
12 not reasonably effective?

13 MR. HUDSON: Same objections.

14 **A. No. We would -- we would take a set of facts**  
15 **that we were given in a complaint and then we would try**  
16 **to apply the law, and I don't typically work in reverse.**

17 Q. Have you developed any standards at this point  
18 for deciding what would be an action that would obstruct  
19 the view of a watcher?

20 **A. No, ma'am.**

21 Q. Have you developed any standards that would  
22 allow you to decide whether a poll official had  
23 distanced the watcher from the activity?

24 MR. HUDSON: I'll just remind you of the  
25 running objection that we have concerning privileges,

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1 **scan it at the door on your way out.**

2 Q. Okay. So generally you vote on a machine that  
3 has a screen and it's sitting on a little table with  
4 some long legs on it; is that right?

5 **A. Yes, ma'am.**

6 Q. Okay. And then you're going to take the piece  
7 of paper that it gives you, and you're going to walk  
8 over to that receptacle and put your piece of paper in  
9 there; is that right?

10 **A. Yes, ma'am. Place it in the receptacle.**

11 Q. Okay. Sometimes called a tabulator. Okay. So  
12 let's take the instance of a voter who is standing at  
13 one of those voting machines like the kind that you vote  
14 on, Mr. White. How close -- let me ask the question  
15 this way. How far could a watcher be placed by the  
16 election judge such that it would violate Section  
17 4.09(a) in SB 1?

18 MR. HUDSON: Objection. Incomplete  
19 hypothetical. Objection, calls for speculation.

20 **A. I don't think I could answer that.**

21 Q. Is it because you don't know?

22 **A. I couldn't --**

23 MR. HUDSON: Objection, calls for an  
24 incomplete hypothetical. Calls for speculation.

25 **A. Yeah. I don't have enough facts to -- to**

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1 answer that question. And even if I did have enough  
2 facts, it would probably involve me going into my  
3 thought processes about -- about the offense, and so I  
4 don't think I could answer that.

5 Q. Okay. At this point, I would like to say on  
6 the record that you should listen to your counsel, and  
7 especially if he instructs you not to answer the  
8 question. But counsel is limited to making form  
9 objections and not speaking objections. And so in order  
10 to avoid any appearance of coaching the witness, which I  
11 know counsel would never do, his form objections --

12 MR. HUDSON: Well, I'll just go ahead and  
13 stop you right there and say you're tossing out coaching  
14 on the record. Nobody is coaching by giving form and  
15 giving the description of what the objection is, which  
16 I've been limiting to one word. We also have a standing  
17 objection, our standing or running objection based on  
18 privileges. And I would point out that some of your  
19 questions are clearly targeted at getting at privileged  
20 information, so I'm simply reminding the witness of the  
21 stipulation that you made early on so that I wouldn't  
22 give long objections based on privilege.

23 If you want me to go ahead and start  
24 making all formal objections because you're concerned  
25 that I'm giving speaking objections, I'm happy to do

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1 that. I'm just trying to make sure that my client isn't  
2 reaching out and expanding beyond the privilege  
3 stipulation that we've already made.

4 MS. PERALES: You have your running  
5 stipulation, and we've agreed to that. I just want to  
6 make sure that the form objections are stated as  
7 succinctly as the rules hope we do.

8 Q. (By Ms. Perales) So let's go back to the  
9 voting machine scenario. Mr. White, you're familiar  
10 with your own voting machine that you use in the polling  
11 place in your home county. If we have a situation where  
12 there's a watcher and a voter, and an election judge,  
13 and the election judge has distanced the watcher from  
14 that machine and the activity of the voter at that  
15 machine, is it your testimony that -- that that is still  
16 not enough information upon which you could make a  
17 decision whether there is a violation of 4.09 of SB 1?

18 MR. HUDSON: Objection, speculation.  
19 Incomplete hypothetical.

20 **A. I think that's correct, that I wouldn't have**  
21 **enough information.**

22 Q. Could you explain to me how this new language  
23 in 4.09(a) makes unlawful behavior that previously would  
24 have been lawful?

25 **A. I would say the plain text that was added adds**

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1 something that had actually happened rather than coming  
2 up with examples of what might potentially violate a  
3 code.

4 Q. Do you have an idea of the degree to which the  
5 watcher's subjective perception of whether they have  
6 been distanced or obstructed would play a role in  
7 whether or not there's a violation of Section 4.09?

8 MR. HUDSON: Objection, calls for  
9 speculation. Improper and incomplete hypothetical.

10 A. I would say, from a legal perspective, when we  
11 talk about -- that uses the language "not reasonably  
12 effective," a reasonable standard would be applied. So  
13 normally in the law it would be an objectively  
14 reasonable standard or reasonable person, not this  
15 specific individual and what they thought was  
16 reasonable, but what is the reasonable and objective  
17 standard. And so I believe that's what -- that's what  
18 is implemented in the new language of Subsection A.

19 Q. And so if it is a reasonable person standard,  
20 are you comfortable sharing with me what your thought is  
21 about a distance of the watcher from an activity at a  
22 voting machine that would be reasonable or unreasonable?

23 A. No, I don't think I would.

24 Q. Let's flip forward to Section 6.4. That starts  
25 on Page 52.



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1 Q. Okay. So let's get the ballot in the picture  
2 then. The voter is engaging with me. I am talking  
3 about this clear -- clear -- clean air measure. I know  
4 that the voter has the mail ballot there because the  
5 voter says, "I have the mail ballot right here, it's on  
6 the table inside the door," or "It's right over there on  
7 the kitchen table," the ballot is in the picture. And I  
8 am telling you that I am urging this voter to vote for  
9 the clean air measure because I want this voter to vote  
10 for the clean air measure, okay? So I'm there, I'm  
11 standing in the voter's door. The voter is there, the  
12 mail ballot is there, and I am telling you -- I am  
13 saying to this voter, "Look, I am telling you, we want  
14 to vote for this because it's important; I want you to  
15 vote." And it's my job going door-to-door to make sure  
16 that people vote for this clean air measure. I'm  
17 exhorting the voter at that point.

18 MR. HUDSON: Same objection.

19 **A. Yeah.**

20 Q. Am I running afoul of 7.04?

21 **A. 7.04 being the -- well, it's the section that**  
22 **contains the statute. The vote harvesting statute, we**  
23 **haven't even gotten to.**

24 Q. The compensation. Okay. So let me rephrase  
25 the question. Am I vote harvesting? Am I committing

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1 vote harvesting services as set out in Paragraph 2

2 starting at Line 7, Page 59?

3 **A. Well, I think it may be unclear whether or not**  
4 **the definition of vote harvesting services has been**  
5 **actually triggered or not, and again, the -- the actual**  
6 **involvement of the ballot is kind of one of the nebulous**  
7 **issues in your hypothetical, but, also we haven't even**  
8 **gotten to an offense yet.**

9 Q. Uh-huh.

10 **A. So the offense language, while it involves vote**  
11 **harvesting services, that's merely an element in the**  
12 **several offenses in this section, as well, and then**  
13 **there's kind of a safe harbor set of provisions as well**  
14 **that explain what the section does not apply to, so --**

15 Q. Understood. And the reason that I'm taking  
16 this in pieces is because 7.04, the offense of vote  
17 harvesting is itself made up of elements which are  
18 themselves made up of elements. So vote harvesting is  
19 an element of the offense, and so I'm hoping to get a  
20 clear understanding of what vote harvesting services  
21 means in the context of my hypothetical, because then I  
22 want to move on to other questions.

23 Are you -- are you saying that, if I tell  
24 you that the ballot is on a table inside the door or the  
25 ballot is in view on a kitchen table that you're --

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1 this?

2 MR. HUDSON: Yeah. We'll ask for a  
3 24-hour turnaround on ours. Is that no good? You're  
4 squinting --

5 THE REPORTER: There is no way I can do  
6 that. I'm sorry.

7 MR. HUDSON: Okay. Why don't we go off  
8 the record and we can talk about the timing on it.

9 (Deposition concluded.)

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